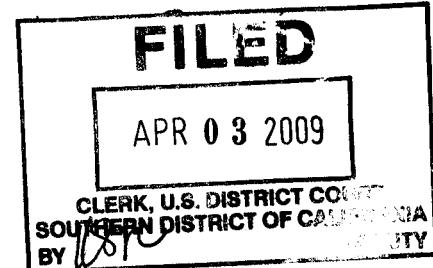


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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CARLOS VARGAS-JURIE

Petitioner,

V.

UNITED STATES OF AMERICA

Respondent

Cr. No. 08-1217GT
Cv. No. 08-1234GT
ORDER

19 On July 9, 2008, Petitioner, Carlos Vargas-Juriel (“Mr. Vargas”), filed a Motion to Modify
20 Sentence, presumably pursuant to 28 U.S.C. § 2255. The Court has fully considered this matter,
21 including a review of Mr. Vargas’ brief filed, the authorities cited therein and the arguments
22 presented. For the reasons stated below, Mr. Vargas’ Motion to Modify Sentence is **DENIED**.

23 First, Mr. Vargas pled guilty, pursuant to a written plea agreement, to one count of False
24 Statement to a Federal Officer, in violation of 18 U.S.C. § 1001. In the written plea agreement, Mr.
25 Vargas explicitly waived his right to appeal and/or collaterally attack his conviction or sentence.
26 The Ninth Circuit has long acknowledged that the terms of a plea agreement are enforceable. *See,*
27 United States v. Baramdyka, 95 F.3d 840, 843 (9th Cir. 1996), *cert. denied*, 117 S.Ct. 1282 (1997).
28 Since Mr. Vargas expressly waived his statutory right to appeal or collaterally attack his sentence

1 in his plea agreement, Mr. Vargas is now precluded from challenging that sentence pursuant to 28
2 U.S.C. § 2255. *See, United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993) (holding that
3 a knowing and voluntary waiver of a statutory right is enforceable).

4 Moreover, even if Mr. Vargas had not expressly waived his right to appeal or collaterally
5 attack his sentence, his petition would still fail. Mr. Vargas prays for relief because he has a
6 family in Tijuana, Mexico who needs him. While this is all too common and unfortunate, the
7 Court can not grant any relief unless “the movant has made specific factual allegations that, if
8 true, state a claim on which relief could be granted.” *United States v. Leonti*, 326 F.3d 1111,
9 1116 (9th Cir. 2003), citing *United States v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984).
10 That his family needs him and his support in not such a claim. Accordingly,

11 **IT IS ORDERED** that Mr. Vargas’s Motion to Modify Sentence is **DENIED**.
12 **IT IS SO ORDERED.**

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14

4-2-09
date


GORDON THOMPSON, JR.
United States District Judge

15

cc: AUSA Bruce Castetter

Petitioner

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